

# IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

THE STATE OF NEBRASKA,  
Plaintiff,

vs.

RANDY S. PETERSON,  
Defendant.

Case No. CR02-9

## ORDER DENYING MOTION IN FORMA PAUPERIS

**DATE OF HEARING:** No hearing held.

**APPEARANCES:** None.

**SUBJECT OF HEARING:** Defendant's motion for leave to proceed in forma pauperis and affidavit.

**ORDER:** The motion is denied, because:

1. The affidavit fails to state two of the required statements, namely, the nature of the action, defense, or appeal, and the affiant's belief that he is entitled to redress. Thus, the affidavit fails to meet the plain and ordinary language of § 25-2301.01.

2. Moreover, it is clear that the defendant's attempt to appeal *at this point in time* is frivolous. The judgment in a criminal case is the sentence. *State v. Hess*, 261 Neb. 368, 622 N.W.2d 891 (2001). For purposes of appeal in a criminal case, the judgment occurs when the verdict and sentence are rendered by the court. *Id.* A finding of guilty is a conviction, but it is not a judgment or final order, and there can be no appeal until a sentence has been imposed. *Id.* Because no sentence has yet been imposed, the defendant's attempt to appeal at this point is clearly premature and legally frivolous.

3. Because the attempt to appeal is clearly frivolous at this point, this court intends to proceed as previously scheduled. The notice of appeal from a nonappealable order does not render void for lack of jurisdiction acts of the trial court taken in the interval between the filing of the notice and the dismissal of the appeal by the appellate court. *Holste v. Burlington Northern R.R. Co.*, 256 Neb. 713, 592 N.W.2d 894 (1999).

Consequently, this court retains jurisdiction to proceed to sentencing, and fully intends to do so.

Signed in chambers at **Ainsworth**, Nebraska, on **October 11, 2002**;  
DEEMED ENTERED upon file stamp date by court clerk.

BY THE COURT:

If checked, the court clerk shall:

☒ Mail a copy of this order to all counsel of record and any pro se parties.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

☒ Note the decision on the trial docket as: [date of filing] **Signed “Order Denying Motion In Forma Pauperis” entered.**  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

☐ Mail postcard/notice required by § 25-1301.01 within 3 days.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

☐ Enter judgment on the judgment record.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

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William B. Cassel  
District Judge

Mailed to: